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No 592

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

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CARL G. SWANSON,

Petitioner,

versus

THE FLORIDA BAR, ET AL.,

Respondents.

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On Petition for Certiorari to the United States Court of Appeals, Fifth Circuit

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## REPLY BRIEF OF PETITIONER

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*Attorney for Petitioner*

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## REPLY BRIEF OF PETITIONER

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Petitioner Carl G. Swanson for reply herein submits:

### ARGUMENT

1. The respondents in their brief admit on Page 4, et seq, that a committee of lawyers of the Florida Bar prosecutes and adjudicates grievances under the integrated rule, carries out the investigatory and accusatory processes, appoints its referee and its own prosecuting attorney to conduct the proceeding, enters a judgment of guilty, and finally, admits on Page 6 that the functions of the investigative,

prosecutive and adjudicatory processes are combined and carried out by such committee.

The rules and admissions constitute the facts apparent on the face of the integrated rule and they cannot be denied. Indeed, no other reasonable construction could be made of the rule and any other facts involving the constitutional issue here are irrelevant and immaterial.

This case does not involve the constitutional rights of a person lately placed under arrest where facts are necessary to determine whether such a person's rights were invaded. It is a case where Federal jurisdiction was invoked asking that the court determine the constitutionality of the law and rule and decide petitioner's case. The facts set out in the complaint should be taken as 100% true on the face of the original pleading for the purpose of any writ sought, and no other facts are involved.

If a person being prosecuted under an ex post facto law applied to the Federal courts for an injunctive constitutional relief, where the law was enacted after the commission of the offense, it would be unconstitutional. In this case it appears on its face, as well as, being admitted in the respondents' brief that we have the same simple situation because the functions of investigator, prosecutor, judge and jury are combined, and under no circumstances could be said that the trial being accorded petitioner is a public trial in a public tribune.

2. The respondents, in their brief, do not and cannot cite any case holding such laws and procedures constitutional. They cannot do so because there are none. But the respondents cite Rescue Army vs Municipal Court, 331 U.S. 549 (1946) seeking to prevent adjudication of petitioner's

constitutional rights, and *this case is not in point or applicable here.*

Unlike the Army Rescue case, which involved a direct appeal from a California appellate court to the Supreme Court of the United States after a new trial had been granted by an appellate state court and before a final judgment, this is a case where Federal aid is requested in seeking relief on Federal constitutional questions originating in the U.S. District Court, for the Middle District of Florida, to determine the constitutionality of the so-called integrated rule which offends the Federal Constitution whether on its face or as it affects petitioner who is being tried under the rule or law.

In other words, we are here seeking certiorari to a *final judgment* of the District Court of the United States for the Middle District of Florida where the cause was dismissed and affirmed by the United States Court of Appeals for the Fifth Circuit. *This is a Federal question involving a final judgment of the Federal Court.*

## CONCLUSION

We are not required to show that bias or prejudice exists in the committee of lawyers or that there was a personal interest or professional jealousy existing where prejudice may be implanted against an accused, indeed *it is only necessary if such a thing could happen as pointed out in the petition herein.*

Title 28 United States Code, Section 1254 (1) was enacted by the Congress so that the Federal courts could determine such constitutional questions and any construction

other than that allowing petitioner his constitutional rights, would render the Section meaningless.

A reading of the case *"In Re Schlesinger, Pa. 1961, 172 A2d 835"* cited in the petition, leaves no doubt of the constitutionality of the integrated rule.

It is therefore urged that petitioner's application for certiorari be granted and the serious constitutional questions determined.

Respectfully submitted,

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